

Amendment No. 3 to SB1325

Burchett
Signature of Sponsor

FILED

Date _____

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Clerk _____

Comm. Amdt. _____

AMEND Senate Bill No. 1325*

House Bill No. 1851

by deleting all language following the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 68, Chapter 1, is amended by adding Sections 2 through 13 of this act as a new, appropriately designated part.

SECTION 2. This part shall be known and may be cited as the “Non-Smoker Protection Act.”

SECTION 3. As used in this part, unless the context otherwise requires:

(1) “Employer” means a person, business, partnership, association, corporation, including a municipal corporation, educational institution, trust, or non-profit entity that employs the services of one or more individual persons;

(2) “Enclosed area” means all space between a floor and ceiling that is enclosed on all sides by solid walls or windows (exclusive of doorways), which extend from the floor to ceiling;

(3) “Place of employment” means an area under the control of a public or private employer that employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and vehicles. A private residence is not a “place of employment” unless it is used as a child care facility, adult day care, or health care facility;

(4) “Public place” means an enclosed area to which the public is invited or in which the public is permitted which is not a public building, including but not limited to banks, educational facilities, health care facilities, hotel and motel lobbies, Laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, recreational

facilities, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms;

(5) "Environmental tobacco smoke" (ETS), or "secondhand smoke" is the complex mixture formed from the escaping smoke of a burning tobacco product (termed as side stream smoke) and smoke exhaled by the smoker. Exposure to ETS is also frequently referred to as "passive smoking" or "involuntary smoking";

(6) "Restaurant" means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term "restaurant" shall include a bar area within the restaurant;

(7) "Service line" means an indoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money;

(8) "Shopping mall" means an enclosed public walkway or hall area that serves to connect retail or professional establishments;

(9) "Smoking" means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, or other lighted tobacco product in any manner or in any form;

(10) "Sports arena" means sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events;

(11) "Health care facility" means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions; and

(12) "Retail tobacco store" means a retail store that derives its largest category of sales from tobacco products and accessories. "Retail tobacco store" does not include grocery stores, convenience stores, gas stations, general retailers or similar retail establishments.

SECTION 4.

(a) Smoking shall be prohibited in all enclosed public places within the state of Tennessee, including but not limited to, the following places:

- (1) Aquariums, galleries, libraries, and museums;
- (2) Areas available to and customarily used by the general public in businesses and non-profit entities patronized by the public, including but not limited to, banks, laundromats, factories, professional offices, and retail service establishments;
- (3) Child care and adult day care facilities;
- (4) Convention facilities;
- (5) Educational facilities, both public and private;
- (6) Elevators;
- (7) Health care facilities;
- (8) Hotels and motels;
- (9) Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities;
- (10) Polling places;
- (11) Public and private transportation facilities, including trains, buses, taxicabs and airports, under the authority of state or local governments and ticket, boarding, and waiting areas of public transit depots;
- (12) Restaurants;

(13) Restrooms, lobbies, reception areas, hallways, and other common-use areas;

(14) Retail stores;

(15) Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or council of the state of Tennessee or a political subdivision of the State, to the extent the place is subject to the jurisdiction of the state;

(16) Service lines;

(17) Shopping malls;

(18) Sports arenas, including enclosed places in outdoor arenas; and

(19) Theaters and other facilities primarily used for exhibiting motion pictures, stage dramas, lectures, musical recitals, or other similar performances.

(b) This prohibition on smoking shall be communicated to all existing employees by the effective date of this part and to all prospective employees upon their application of employment.

SECTION 5.

(a) Notwithstanding any other provision of this part to the contrary, the following areas shall be exempt from the provisions of Section 4:

(1) Private homes, private residences and private automobiles, provided however it shall only apply when such homes, residences or vehicles are being used for child care or day care or when the private vehicle is being used for the public transportation of children or as part of health care or day care transportation;

(2) Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than

twenty-five percent (25%) of rooms rented to guests in a hotel or motel may be so designated. All smoking rooms on the same floor must be contiguous and smoke from these rooms must not infiltrate into areas where smoking is prohibited under the provisions of this part;

(3) Nursing homes and long term care facilities licensed pursuant to title 68, chapter 11. Such exemption shall only apply to residents of such facilities, and resident smoking practices shall be governed by the policies and procedures established by such facilities provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this part; and

(4) Retail tobacco stores that prohibit minors on their premises, manufacturers, importers or wholesalers of tobacco products, tobacco leaf dealers or processors and all tobacco storage facilities.

(b) These exemptions shall not apply to any entity that is established for the purpose of avoiding compliance with this part.

SECTION 6.

(a) In each public place, public meeting, and place of employment in which smoking is prohibited by this part, the employer, proprietor or other person in charge of the premises shall post or cause to be posted in a conspicuous place, including, but not limited to every public entrance and exit, signs clearly stating that smoking is prohibited by state law. All signs required to be posted under this section shall have letters at least four inches (4") high with the principal strokes of letters not less than one-half inch (0.5") wide. The color and design of such signs shall be left to the discretion of the employer or person in charge of the premises.

(b) All ashtrays shall be removed from any area where smoking is prohibited by this part by the owner, operator, manager, or other person having control of the area.

SECTION 7.

(a) No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or customer because that employee, applicant, or customer exercises any rights afforded by this part or reports or attempts to prosecute a violation of this part.

(b) An employee who works in a setting where an employer allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.

(c) This part does not create any new private right of action nor does it extinguish any existing common law causes of action.

SECTION 8. Smoking is prohibited within a distance of twenty feet (20') outside entrances and operable windows of enclosed areas where smoking is prohibited, so as to insure that tobacco smoke does not enter those areas.

SECTION 9.

(a) This part shall be enforced jointly by the department of health and by the department of labor and workforce development.

(b) Notice of the provisions of this part shall be given to all applicants for a business license pursuant to title 67, chapter 4, part 7.

(c) Any citizen who desires to register a complaint under this part may initiate enforcement with either the department of health or the department of labor and workforce development, as appropriate.

(d) Any inspection of an establishment otherwise mandated by state law shall include inspection for compliance with this part.

(e) An owner, manager, operator, or employee of an establishment regulated by this part shall inform persons violating this part of the appropriate provisions thereof.

(f) Notwithstanding any other provision of this part, an employee or private citizen may bring legal action to enforce this part.

(g) In addition to the remedies provided by this part, the commissioner of health or the commissioner of labor and workforce development, or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or a place of employment to comply with the provisions of this part may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

(h) The commissioner of health and the commissioner of labor and workforce development are authorized to promulgate rules to effectuate the provisions of this part in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 10.

(a) A person who knowingly smokes in an area where smoking is prohibited by the provisions of this part shall be subject to a civil fine not exceeding fifty dollars (\$50.00).

(b) A person who owns, manages, operates, or otherwise controls a public place or place of employment and who knowingly fails to comply with the provisions of this part shall be subject to a civil fine:

(1) Not exceeding one hundred dollars (\$100) for a first violation;

(2) Not exceeding two hundred dollars (\$200) for a second violation within one (1) year; or

(3) Not exceeding five hundred dollars (\$500) for each additional violation within one (1) year.

(c) Each day on which a knowing violation of this part occurs shall be considered a separate and distinct violation.

(d) In addition to the fines established by this section, five (5) or more knowing violations of this part within one (1) year by a person who owns, manages, operates, or otherwise controls a public place or place of employment

may result in the suspension of any permit or license issued to the person for the premises on which the violation occurred.

SECTION 11. The department of health in conjunction with the department of labor and workforce development shall engage in a continuing program to explain and clarify the purposes and requirements of this part to citizens affected by it, and to guide owners, operators, and managers of places of employment in their compliance with it.

SECTION 12. The commissioners of the departments of health and labor and workforce development shall annually request other governmental and educational agencies within the state to establish local operating procedures in cooperation and compliance with this part. This includes urging all municipalities and local education agencies to update any existing smoking control regulations or policies to be consistent with the current health findings regarding secondhand smoke.

SECTION 13. This part shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

SECTION 14. If any provision of this act or the application thereof to any person, thing or circumstance is held invalid, such invalidity shall not affect the provisions or application of this act that can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 15. This act shall take effect ninety (90) days after becoming a law, the public welfare requiring it.